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July 26, 1994

Warren's Direct Dial  
(202) 828-8812

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JUL 26 1994

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

BY HAND DELIVERY

William F. Caton  
Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Room 222  
Washington, D.C.

Re: Notification of Permitted Ex Parte Presentations —  
MM Docket No. 92-265

Dear Mr. Caton:

Pursuant to Sections 1.1206(a)(1) and (a)(2) of the Commission's Rules, Cole, Raywid & Braverman, on behalf of Superstar Satellite Entertainment and United Video, hereby submit an original and one copy of this Memorandum and Attachment regarding permitted *ex parte* presentations in the above-referenced docket.

On Monday, July 25, 1994, Jerry L. Parker, of Superstar Satellite Entertainment, Kim Koonz-Bayliss of United Video, and Robert L. James and John D. Seiver of Cole, Raywid & Braverman, met separately with Lisa Smith of the Office of Commissioner Andrew C. Barrett; Merrill Spiegel of the Office of Chairman Reed E. Hundt; Maureen O'Connell of the Office of Commissioner James H. Quello; Jane Mago of the Office of Commissioner Rachelle Chong; and James Olson, Diane Hofbauer, and Nancy Markowitz

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William F. Caton, Secretary

July 25, 1994

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of the Cable Services Bureau; and on Tuesday, July 26, with David Siddall of the Office of Commissioner Susan Ness. At these meetings, discussions concerned the attached handouts and oppositions to Petitions for Reconsideration filed by Superstar Satellite Entertainment and United Video in the rulemaking proceedings referenced above.

If you have any questions, please contact the undersigned.

Respectfully submitted,

John D. Seiver

Attachments

cc: Lisa Smith (w/o Attach.)  
Merrill Spiegel (w/o Attach.)  
Maureen O'Cormell (w/o Attach.)  
Jane Mago (w/o Attach.)  
James Olson (w/o Attach.)  
Diane Hofbauer (w/o Attach.)  
Nancy Markowitz (w/o Attach.)  
David Siddall (w/o Attach.)  
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OFFICE OF GENERAL COUNSEL



## SUMMARY OF MAJOR ARGUMENTS AGAINST AWARDING DAMAGES IN PROGRAM ACCESS-PRICE DISCRIMINATION PROCEEDINGS:

1. The possibility of damage awards will encourage abuse of the program access regulations.
  - \* Complainants do not need the incentive of damage awards or attorneys fees in order to file complaints -- filing a complaint does not require an attorney, the amount of information required in a complaint is minimal, the threshold for establishing a valid complaint is low and the Commission has even provided a sample complaint form in the rules.
  - \* The lack of damages has not prohibited a number of complaints from being filed.
  - \* The possibility of damage awards and the low threshold for establishing a valid complaint will encourage distributors to abuse the regulations for contract negotiating purposes.
2. There is no accurate or equitable way to measure damages in these cases.
  - \* The only other situation in which damages are awarded, Title II, is not an appropriate model for the program access regulations since none of the satellite programmers are "common carriers."
  - \* Even if Title II damage awards were appropriate, the measure of damages in Title II actions is "lost profits" -- not the difference between one rate and another. In the case of satellite, it would be pure speculation to assume that the price of programming charged to the distributor resulted in a lost "sale", particularly since there is no indication that reductions in the price of programming distributors have already received are being passed on to consumers.
3. The initial rate cases under the program access rules will be cases of first impression.
  - \* It would be unfair to add damages and attorneys fees to the other remedies already available in program access rate cases since there are no formulas or hard and fast rules establishing appropriate prices for programming. Moreover, there is no indication of any willful or intentional action by programmers to violate the rules.
4. Current remedies are appropriate.
  - \* Programmers found in violation of the FCC's program access regulations can be forced to reduce their rates. The FCC can also order forfeitures. These are ample deterrents to programmers to comply with the regulations. Indeed, Superstar has taken a number of steps to come into compliance with the regulations, including reducing its rates by 15% to 40%.
  - \* Programmers subject to a complaint under the FCC's program access regulations have the burden of justifying their rates. This process will be expensive and time-consuming. Programmers have every reason to avoid this process by complying with the FCC's program access regulations.

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# SUPERSTAR

Satellite Entertainment

## THE UNITED VIDEO CONNECTION

United Video first introduced

the Chicago metropolitan

area to satellite television

in 1978. During 1980, UVI

published its first catalog

listing 10 dish stations

available to dish subscribers.

Since programming was

provided via satellite

transmissions which had

been received by dish

receivers, it was

necessary to obtain

subscriptions from each

household which

wanted to receive

programming. This

meant that each

household had to

pay for programming

from each station

which provided

programming.

**A**t that time, United Video Inc.

(UVI) published 14 programming

stations, WGN, KTTV, and WPIX, and were

one of the few companies to

provide programming. After

scrapping its signals in 1986, UVI

founded Superior Connection,

now Superior Satellite

and with 10 dish stations

now Superior Satellite

## THE FIRST HOME SATELLITE DISH

The home satellite dish market

began in 1976 when Taylor Howard

developed a satellite dish that could

receive HBO and other satellite

cable programming signals. Over

the next 10 years, people installed

close to a million home satellite

dishes and received satellite

programming free.

Programmers soon realized they

needed a system to collect payment

for the extensive costs

required to uplink

signals, distribute

programming

and pay for

copyright fees.

Beginning in 1986,

programmers

scrubbed their signals and

required home dish owners to

purchase subscriptions to

receive programming.

Entertainment, to bring satellite television programming to home equipment manufacturers in satellite dish owners. The first year of operation, Superior sold only WGN, KTTV, and WPIX.

**SUPERSTAR ENTERTAINMENT**

We've been growing and changing

the last eight years. Superior currently offers over 65 programming options from premium services like

HBO, Showtime, and The Disney

Channel, to sports and news

channels such as ESPN, TNT and

CNN. We offer 7 superstations,

8 movie networks, 23 regional sports

channels, and 28 cable favorites.

**OUR PROGRAMMING & LEGAL AFFAIRS DIVISION**

This division plays four key roles in

Superior's success. It negotiates our

programming agreements with

acquirers and national distributors.

It handles our negotiations in other

third party packages, handles legal

and represents Superior in

negotiations with third party

acquirers, and represents Superior in

negotiations with other programming services

such as HBO, USA, Showtime,

ESPN, CNN, etc.

**PROGRAMMING AND LEGAL AFFAIRS**

With its focus on selling

satellite programming we follow

a principle focus the real estate

business - location is everything

we're everywhere. We sell our

programming through satellite

superstation channels, duopolies,

and even join with satellite equipment manufacturers in special promotions. We also sell directly to the home dish owner through our 24 hour telemarketing operators and through other third party packages.

**SATellite**  
Today we're much more than satellite programming. We've established ourselves as a leader in retail and wholesale programming sales, computer services and software innovation.

**WHILE WE'RE EXPANDING, OUR**

TELEVISION PROGRAMMING IS BECOMING MORE AND MORE COMPLEX.

**WE ARE EXPANDING OUR**

**DISPATCHES**

While our advertising division is busy selling programming to home dish owners, our programming and legal affairs division is busy selling our own superstations WGN, WPIX, KTTV, and KTLA to markets in the United States and Canada. This is accomplished through a network of distributors who we've divided into third party packages.

**OUR PROGRAMMING & LEGAL AFFAIRS DIVISION**

Today among these third party

partners are programmers (Flame

HBO), cable operators who serve

the basic dish market (Cableplus

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## CABLE VS HSD

Superior has been

expanding rapidly throughout

the country and has

achieved a number of

firsts in the industry.

Our success has been

achieved through our

ability to provide

high quality programming to home

dish owners at competitive

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## SUPERSTAR'S PROGRAMMING LINE-UP

### SUPERSTAR'S CHANNELS

market, Superstar has achieved an 82 percent penetration rate for WGN, 47 percent for KTLA, and 34 percent for WPX and KTVT.

### LICENSING

The Programming and Legal Affairs Division also represents Superstar in legislative and legal arenas such as the FCC, Congress, the U.S. Copyright Tribunal, the Canadian Copyright Board and the Federal Court of Appeals, and monitors the effects of government legislation on the changing communications industry.

By keeping in touch with current legislative issues regarding satellite communications, Superstar maintains its competitive edge.

## Our TeleMarketing Sales Division

The TeleMarketing Sales Division is Superstar's telecommunications division consisting of three different types of programming sales. Our dealers, inbound telemarketing and our bound advertising departments provide several opportunities to sell programming to home disk owners. The following is a brief description of each:

**DEALER SALES**

Superstar believes in the same concept. We work with our satellite equipment dealers to make it as easy as possible for them to sell our programming. What we do is

something right since 1972, our dealer base has grown from 88 to over 4700 dealers. Currently, 80 percent of Superstar's new

subscribers come from our dealers.

**W**e believe our dealer program succeeds because it's simple and profitable. Once a dealer installs a customer's equipment, he calls

Superstar to instantly authorize the customer's programming. The dealer then receives residuals for the lifetime of his customer's subscription.

### INBOUND SALES

Customers who already own their receiving equipment order Superstar programming as a result of reading our advertisements in program guides or via direct mail campaigns.

These customers call Superstar's inbound telemarketing department to purchase their programming directly through us.

**O**ur inbound representatives receive calls from both satellite equipment dealers and home disk owners. The inbound representatives receive up to 8,000 calls a day and will take in excess of two million calls this year.

**OUTBOUND SALES**

Superstar's outbound advertising department provides the only opportunity in the industry using predictive dialing to increase our profitability, productivity and efficiency.

**O**ur predictive dialer gives us a unique edge over our competitors in advertising. We're the only company in the industry using predictive dialing to increase our profitability, productivity and efficiency.

## Non-Stop Customer Care

**W**e believe user 92 percent of customer retention rate is the highest in the industry even though we have over 33 competitors. Our customer service record and customer retention is a product of our excellent telemarketing staff and agents.

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**HIGH TECH SERVICE**

Training and training personnel, conducting regular needs monitoring, service level and quality control are only a few of the requirements for a successful profitable television operation. The advancements in technology is changing rapidly. To remain competitive, the equipment, services and marketing techniques must be constantly reviewed, evaluated, and updated.

outbound department. The company encourages companies to call us for referrals or to purchase new programming. If a customer doesn't renew his subscription after receiving an invoice or a direct mail piece, an established representative generally calls the customer in an effort to retain the subscription.

**O**ur outbound representatives are trained by fully trained representatives and 97 percent of the calls are answered in 12 seconds or less.

Our service level is currently measured. We keep a time search on line backlog and abandoned call times in order to prevent problems before they begin.

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**O**ur nonstop advertising staff receives competitive rates due to our high volume and constant advertising.

**C**omplex market. Our competitors are not our

## COMPLEX MARKET:

OUR  
COMPETITORS  
ARE OUR  
CUSTOMERS

## THE ACCESS CONTROL CENTER

### MEMBERS AND PARTS

Newspaper businesses work together to provide basic cable services as well as communications, transportation, business, travel, finance, financial planning, SBC, SBC Direct, Cablesat, the conversion of coaxial to fiber optics, Roto-Phone, and more.

For SBC is the subscriber and subscriber each contributes

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**S** uperstar develops high-tech equipment to optimize customer service. So the only thing our customers really need to know about our system is that this technology means fast, efficient service for them.

### OUR COMPUTER SERVICE DIVISION

\*\*\*\*\*

Today, Superstar is involved in much more than just the sale of satellite programming. A major task was filled in 1990 when Superstar introduced Back Office Software Systems (BOSS), a revolutionary new software and programming access system, designed specifically for the home satellite industry. This new system gave third party packagers the ability to quickly service subscription services and bill customers directly while maintaining their subscriber base.

**S** uperstar's computer services department consists of BOSS and

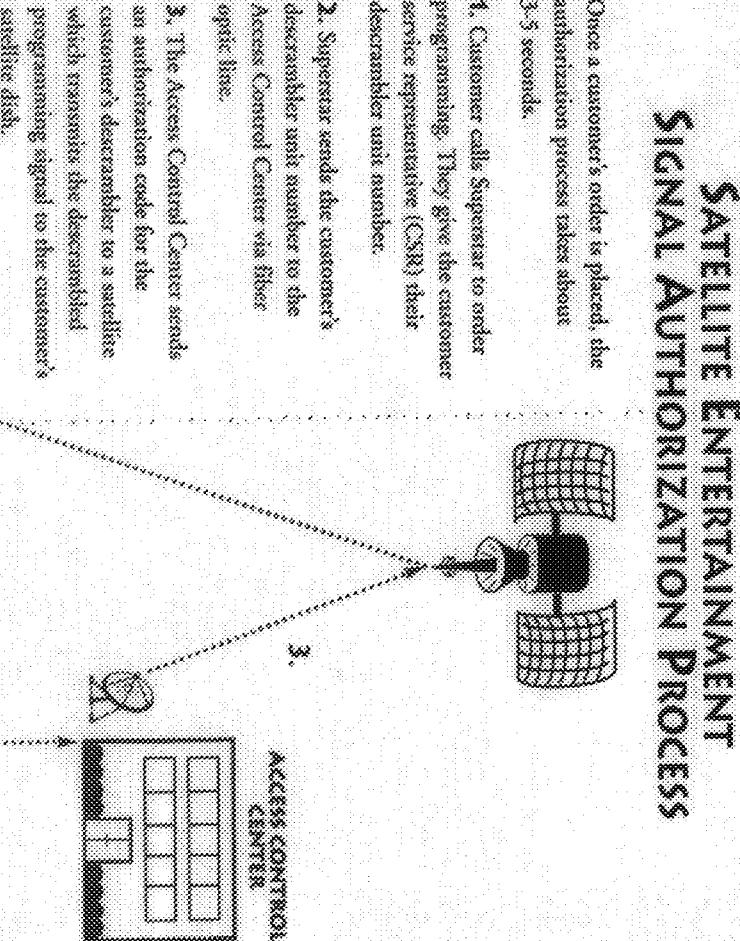
PC Quickstop. Superstar develops customized and sells software services to companies that sell satellite programming. Superstar currently has 53 companies throughout the United States and Canada utilizing the BOSS system.

Superstar is also developing subscriber management systems for use with future technologies such as DBS, Digital Compression and Multiplex.

### SUPERSTAR'S FUTURE

\*\*\*\*\*

Since its inception, the home satellite industry has grown to over 3.8 million subscribers and should reach 3.1 million by the end of 1991. Superstar has established itself as an industry leader in satellite programming, educational programming, and home satellite subscriber services. Because of this, we were naturally chosen to be



## SATELLITE ENTERTAINMENT SIGNAL AUTHORIZATION PROCESS